

Assistant shall not be related by blood, marriage or operation of law to the individuals receiving Section 8 housing assistance nor contribute a portion of his or her income or resources towards the expenses of these individuals. (See §§ 882.106(d) and 882.109(n).)

**Service Agency.** A public or private non-profit organization which is recognized by the State as qualified to determine the supportive service needs of individuals who will reside in Independent Group Residences. The service agency may perform outreach to potential residents of Independent Group Residences and assist these individuals in applying for housing assistance, provide all or a portion of the supportive services and may identify and coordinate appropriate local, public or private resources to furnish these services. The Service Agency may own or sublease an Independent Group Residence.

**Service agreement.** A written agreement approved by the State between the Owner (including an entity with the right to sublease) of an Independent Group Residence and the Service Agency and/or other entities providing the supportive services to the occupants of Independent Group Residences. The agreement shall specify the type and frequency of the supportive services to be furnished. (See §§ 882.109(n)(6) and 882.209(j)(2)).

**Shared housing.** As defined in part 813 of this chapter.

**Single Room Occupancy (SRO) Housing.** A unit which contains no sanitary facilities or food preparation facilities, or which contains one but not both types of facilities (as those facilities are defined in § 882.109 (a) and (b)), and which is suitable for occupancy by a single eligible individual capable of independent living.

**Tenant Rent.** The monthly amount defined in, and determined in accordance with part 813 of this chapter.

**Total Tenant Payment ("Gross Family Contribution").** The monthly amount defined in, and determined in accordance with part 813 of this chapter.

**Utility allowance.** As defined in part 813 of this chapter, approved by a PHA.

**Utility reimbursement.** As defined in part 813 of this chapter. It is inapplica-

ble to a Family renting only a manufactured home space.

**Very Low-income Family.** As defined in part 813 of this chapter.

[43 FR 61246, Dec. 29, 1978, as amended at 44 FR 65364, Nov. 9, 1979; 47 FR 33500, Aug. 3, 1982; 48 FR 43582, Sept. 23, 1983; 49 FR 12237, Mar. 29, 1984; 49 FR 19945, May 10, 1984; 49 FR 26576, June 28, 1984; 50 FR 9269, Mar. 7, 1985; 50 FR 38794, Sept. 25, 1985; 51 FR 21308, 21309, June 11, 1986; 53 FR 4388, Feb. 16, 1988; 53 FR 7734, Mar. 10, 1988; 61 FR 5212, Feb. 9, 1996]

**§§ 882.103–882.105 [Reserved]**

**§ 882.106 Contract rents.**

(a) **Fair Market Rent limitation.** (1) The Gross Rent for any existing housing unit approved pursuant to § 882.209(f) shall not exceed the Fair Market Rent applicable to such unit on the date of Lease approval, except as provided in this paragraph (a).

(2) The PHA may approve, on a unit-by-unit basis, initial Gross Rents that exceed the applicable Fair Market Rents by up to 10 percent. The total number of units with such rents approved under this paragraph (a)(2) and under paragraph (b)(2)(i) of § 882.714, Initial Contract Rents, may not exceed 20 percent of the number of units under ACC for the PHA's Certificate Program. The PHA, however, may also exercise such authority with respect to more than 20 percent of the units under ACC if HUD approves such extension of the PHA's authority. In considering whether to grant such approval, HUD will review the appropriateness of the applicable Fair Market Rents and the relationship of estimated program costs to program objectives.

(3) HUD may approve, upon request from a PHA, maximum Gross Rents for all units of a given size or type (elevator/nonelevator) of up to 20 percent above the applicable Fair Market Rents within a designated municipality, county or similar locality. Any such request must be supported by a statement of the special circumstances warranting such increase in maximum Gross Rents, including whether such higher rents are necessary to implement a Housing Assistance Plan. In

considering whether to grant such approval, HUD will review the appropriateness of the applicable Fair Market Rents and the relationship of estimated program costs to program objectives. In no event shall a maximum Gross Rent, as approved under this paragraph, exceed the rent, including Allowances for Utilities and Other Services, determined by HUD to be the average rent currently being charged for available standard units of similar size or type in the applicable municipality or county.

(4) On the basis of a showing by the PHA that (i) special circumstances apply to units of a given size or type limited to a specified neighborhood, (ii) by reason of these circumstances the reasonable Gross Rents for such units are as high as 20 percent above the applicable Fair Market Rents, and (iii) the units cannot be rented for less, HUD may authorize the PHA to approve Gross Rents for such units up to 20 percent above the applicable Fair Market Rents. On the basis of a showing by the PHA that (iv) the leasing of a certain unit is necessary to meet the unique needs of a particular Family, (v) the reasonable Gross Rent for the unit is as high as 20 percent above the applicable Fair Market Rent, and (vi) the unit cannot be rented for less, HUD may authorize the PHA to approve a Gross Rent for that unit up to 20 percent above the applicable Fair Market Rent. Authorization under this paragraph (a)(4) shall be based upon substantially the same criteria as under paragraph (a)(3) of this section except for the last sentence thereof.

(b) *Rent reasonableness limitation.* (1) The PHA shall certify for each unit for which it approves a lease that the Contract Rent for such unit is:

(i) Reasonable in relation to rents currently being charged for comparable units in the private unassisted market, taking into account the location, size, type, quality, amenities, facilities and management and maintenance service of such unit, and

(ii) Not in excess of rents currently being charged by the Owner for comparable unassisted units.

(2) For an assisted unit that is subject to local rent control, comparable units are rent controlled units. How-

ever, for an assisted unit that is not subject to local rent control while it is assisted (regardless of whether the unit would be subject to such control if it were not assisted), comparable units are units that are not subject to local rent control.

(3) The PHA shall maintain for three years all certifications and relevant documentation under this paragraph (b) for inspection by HUD.

(c) *Congregate Housing.* (1) The Fair Market Rent for each congregate housing unit shall be the same as for 0-bedroom units, except that, if the unit consists of two or more private rooms, the Fair Market Rent shall be the same as for a 1-bedroom unit.

(2) In determining the reasonableness of the rents, consideration shall be given to the presence or absence of common rather than private cooking, dining and sanitary facilities and the provision of special amenities or maintenance and/or management services.

(d) *Independent Group Residences.* (1)(i) The Fair Market Rent for an Independent Group Residence shall be the Fair Market Rent applicable to the unit size being leased, for example, a 4-bedroom unit if the residence contains 4 bedrooms.

(ii) The PHA shall issue a Certificate of Family Participation to each eligible Family which will reside in an Independent Group Residence. A separate Lease and Contract shall be executed for each such Family. A Resident Assistant who lives in the unit may be counted as a Family member in determining the appropriate number of bedrooms. However, the Resident Assistant's income shall be disregarded in determining the Total Tenant Payment, the Tenant Rent or the Family's income eligibility.

(2) For purposes of determining the housing assistance payment for each individual participating in the Section 8 Existing Program, the PHA shall allocate the Gross Rent, which is subject to paragraphs (a) and (b) of this section, among the total number of occupants in the Independent Group Residence in an equitable manner which ensures that the Gross Rents of occupants (other than the resident Assistant(s), if any, occupying no more than

1-bedroom) not receiving Section 8 assistance are not subsidized.

To determine the portion of the Gross Rent to be allocated to each individual receiving Section 8 assistance, the Gross Rent is divided by the total number of occupants in the Independent Group Residence other than the Resident Assistant(s), if any, who will occupy no more than 1-bedroom. For example, if three Section 8 recipients and a Resident Assistant reside in a 4-bedroom unit, the housing assistance payment for each of the Section 8 recipients would be based on  $\frac{1}{3}$  of the Gross Rent. Likewise, if two Section 8 recipients, a Resident Assistant and a person not receiving Section 8 assistance reside in a 4-bedroom unit, the housing assistance payments for each of the Section 8 recipients would be based on  $\frac{1}{3}$  of the Gross Rent; the person not receiving Section 8 assistance would pay  $\frac{1}{3}$  of the Gross Rent. However, if a Section 8 recipient, a person not receiving Section 8 assistance, and two Resident Assistants each occupy a bedroom in a 4-bedroom unit, the housing assistance payment for the Section 8 recipient would be based on  $\frac{1}{3}$  of the Gross Rent and one of the Resident Assistants would be considered a person not receiving Section 8 assistance since this section prohibits Section 8 assistance being contributed toward more than 1-bedroom for the housing costs of the Resident Assistant(s). In all of these examples the Fair Market Rent for the Independent Group Residence would be that of a 4-bedroom unit.

(3) In determining the reasonableness of the rents, consideration shall be given to the presence or absence of common (rather than private) cooking, dining and sanitary facilities, and to the provision of special amenities or of maintenance or management services.

(e) *Single Room Occupancy Units.* (1) The Fair Market Rent for each SRO unit shall be equal to 75 percent of the 0-bedroom Fair Market Rent.

(2) In areas where HUD has approved the use of exception rents for 0-bedroom units under paragraph (a)(3) or (a)(4) of this section, the SRO exception rent will be 75 percent of the exception rent which applies to the Existing Housing 0-bedroom unit. Further, a SRO unit may be granted an exception

rent for its own specified unit size. In no case may the authorized rent for the SRO unit exceed 75 percent of 120 percent of the 0-bedroom unit FMR.

(3) In determining the reasonableness of the rents, consideration will be given to the presence or absence of sanitary or kitchen facilities.

(f) *Shared Housing.* See § 882.320.

(g) *Other services—exclusion from Contract Rent.* The Contract Rent may not include the cost of providing supportive services, housekeeping or laundry services, furniture, food, or the cost of serving food.

[43 FR 61246, Dec. 29, 1978, as amended at 49 FR 12237, Mar. 29, 1984; 50 FR 38794, Sept. 25, 1985; 51 FR 21309, June 11, 1986; 53 FR 4388, Feb. 16, 1988; 53 FR 7734, Mar. 10, 1988; 54 FR 237, Jan. 4, 1989; 55 FR 9257, Mar. 12, 1990]

**§ 882.107 [Reserved]**

**§ 882.108 Rent adjustments.**

(a) Contract Rents shall be adjusted as provided in paragraphs (a) (1) and (2) of this section upon request to the PHA by the owner. However, the unit must be in Decent, Safe and Sanitary condition and the owner must otherwise be in compliance with the terms of the lease and the Contract. Subject to the foregoing and § 882.106(b) (the rent reasonableness limitations) adjustments to Contract Rents shall be as follows:

(1) *Annual adjustments.* (i) Annual adjustments as of any anniversary date shall be determined by using the applicable Section 8 Annual Adjustment Factor (24 CFR part 888) most recently published by HUD in the FEDERAL REGISTER.

(ii) Contract Rents may be adjusted upward or downward, as may be appropriate. However, in no case shall the adjusted rent be less than the Contract Rent on the effective date of the Contract.

(2) *Special adjustments.* A special adjustment, subject to HUD approval, to reflect increases in the actual and necessary expenses of owning and maintaining the unit which have resulted from substantial general increases in real property taxes, utility rates or similar costs (i.e., assessments, and utilities not covered by regulated rates), but only if and to the extent that the Owner clearly demonstrates